

立法會
Legislative Council

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by the Administration)

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**Bills Committee on
Adaptation of Laws (No.3) Bill 1998**

**Minutes of meeting
held on Wednesday, 30 December 1998 at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Andrew WONG Wang-fat, JP
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
- Member absent** : Hon James TO Kun-sun
- Public Officers attending** : Mrs Carrie WILLIS
Principal Assistant Secretary for Security A
- Ms Rosanna LAW
Assistant Director of Administration (2)
- Mr K F CHENG
Senior Assistant Law Draftsman
- Clerk in attendance** : Mrs Sharon TONG
Chief Assistant Secretary (2)1
- Staff in attendance** : Miss Betty MA
Senior Assistant Secretary (2) 1

Ms Bernice WONG
Assistant Legal Adviser 1

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

2. The Chairman said that to ensure a consistent approach was being adopted in studying the adaptation of laws bills, this Bills Committee should make reference to the paper on the guiding principles applied in the adaptation of laws exercise prepared by the Administration for the Bills Committee on Adaptation of Laws Bill 1998.

3. Principal Assistant Secretary for Security A (PAS/S(A)) said that the purpose of the Adaptation of Laws (No.3) Bill 1998 was to repeal the Smuggling into China (Control) Ordinance (SCCO) (Cap.242) and its subsidiary legislation and the Foreign Jurisdiction (Expenses) Ordinance (FJEO) (Cap.223).

Smuggling into China (Control) Ordinance (Cap.242) and its subsidiary legislation

4. PAS/S(A) briefed members on the background of the Ordinance. She said that the Ordinance was enacted in 1948 to give effect to an agreement between the then Chinese Government and the British Government for various measures to prevent smuggling between Hong Kong and China. It enabled the Chinese Customs to patrol and take enforcement actions in Hong Kong waters within a delineated area (the waters in Mirs Bay and Deep Bay north of the agreed line which was commonly referred to as the “Cap.242 line”). Following the enactment of the Import and Export Ordinance (IEO) (Cap.60) in 1972, smuggling offences had been dealt with entirely under that Ordinance. Since the enactment of SCCO, the Administration had never invoked any provisions under the Ordinance, except that the Cap.242 line continued to be used as a customary reference line, where the Mainland security vessels were allowed access north of the line. The customary reference line had become obsolete after the promulgation of the boundary of the Hong Kong Special Administrative Region (HKSAR) by the State Council in its Order No. 221 on 1 July 1997. The Administration considered that SCCO did not conform with the status of Hong Kong as a Special Administrative Region (SAR) of the People’s Republic of

China (PRC).

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5. Assistant Legal Adviser 1 (ALA1) pointed out that the “Cap.242 line” was equivalent to the specification stipulated in the subsidiary legislation to the Ordinance.

6. The Chairman opined that should the rationale for repealing SCCO be solely due to its obsolescence, the proposed amendments were beyond the scope of the adaptation of laws exercise. In this connection, she asked for supporting arguments that SCCO was not in conformity with the status of Hong Kong as a SAR of the PRC. PAS/S(A) said that some of the provisions in SCCO, for example, section 6 of SCCO allowed vessels of the Chinese Maritime Customs to have powers to patrol in prohibited area and to board and examine the papers of vessels found in such area, contravened the Basic Law which, inter alia, stated that HKSAR should enjoy a high degree of autonomy, be responsible for the maintenance of public order in the Region, and be a separate customs territory.

7. Mr TSANG Yok-sing asked whether the enactment of IEO could be regarded as an implied repeal of SCCO, if not, what the reasons were for not repealing SCCO when IEO was introduced. Mr TSANG also enquired whether section 6 of SCCO had ever been invoked prior to the reunification. PAS/S(A) replied that though the smuggling offences in SCCO had never been invoked, the Ordinance still existed in the Laws of Hong Kong. Given that SCCO had become obsolete, the Administration considered that the Ordinance should be repealed.

8. In response to the Chairman’s enquiry about the overlapping provisions in SCCO and IEO, ALA1 said that both Ordinances gave effect to prevent smuggling by creating different offences.

9. Mr TSANG Yok-sing enquired whether there were two sets of ordinances prevailing, viz. IEO and SCCO, in regulating smuggling offences in Hong Kong. ALA1 pointed out that though smuggling offences had been dealt with under IEO following its enactment, IEO and SCCO were different in the following areas -

- (a) SCCO was confined to smuggling into China whereas there was no such limitation under IEO;
- (b) apart from regulating smuggling, IEO also provided for the regulation and control of the import of articles into Hong Kong, the export of articles from Hong Kong, the handling and carriage of articles within Hong Kong which had been imported into or might be exported from Hong Kong;
- (c) SCCO did not prevent a person from being subject to any fine or

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punishment imposed under other laws for smuggling offences; and

- (d) the Chinese Customs were allowed to patrol and take enforcement actions in Hong Kong waters within a delineated area in SCCO. No such provision was made under IEO.

10. Responding to the Chairman's follow-up question, ALA1 said that apart from the differences in handling smuggling offences, licensing requirements for import and export articles into and from Hong Kong were introduced following the enactment of IEO in 1972. However, the emphasis in SCCO and its subsidiary legislation was different because they were enacted in 1948 to give effect to an agreement negotiated by the British Government and the then Chinese National Government on measures to prevent smuggling between Hong Kong and China.

11. The Chairman wondered if it was appropriate to deal with the repeal of an obsolete ordinance in the context of the adaptation of laws exercise. PAS/S(A) said that following the promulgation of the boundary of the HKSAR by the State Council of the PRC in its Order No. 221 on 1 July 1997, the prohibited area specified in SCCO had become obsolete. Given that SCCO had become obsolete following the enactment of IEO, it was proposed to be repealed in this adaptation exercise from a wider perspective.

12. Mr Andrew WONG was of the view that the purpose for not repealing SCCO upon the enactment of IEO was to allow the Chinese Customs to patrol and take enforcement actions in Hong Kong waters within a delineated area under the Ordinance. The long title of SCCO had stated the legislative intent of SCCO clearly. It provided a prohibited area within the boundary in which the Chinese Maritime Customs could have powers to patrol and take enforcement actions. Following the promulgation of the boundary of HKSAR by the State Council in its Order No. 221, the customary line laid down in SCCO was considered obsolete. In addition, the boundary of HKSAR was no longer a subject for negotiation after the reunification. Adaptation to the Ordinance was not required. As there was no such need for SCCO to exist, he agreed with the proposed repeal of SCCO. The Chairman pointed out that even an ordinance had become obsolete, it did not necessarily mean that it ought to be repealed from the legal point of view. She did not see any correlation between an unenforceable ordinance and the adaptation of an ordinance.

13. Mr Andrew WONG requested the Administration to explain more clearly the rationale for the repeal of SCCO under the adaptation of laws exercise, in particular the customary line laid down in SCCO had become obsolete following the promulgation of the boundary of HKSAR by the state Council in its Order No. 221 on 1 July 1997 in order that the proposed repeal could be dealt

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with under the adaptation of laws exercise.

14. Mr TSANG Yok-sing said that the adaptation of laws exercise should deal with those provisions which were not in conformity with Hong Kong's status as a SAR of the PRC or inconsistent with the Basic Law. The Administration should propose an amendment to revise the boundary laid down in SCCO if the adaptation was to be dealt with under the adaptation of laws exercise. Should the proposed repeal of SCCO be due to its obsolescence, it should be dealt with under an amendment bill.

15. Mr K F CHENG, Senior Assistant Law Draftsman said that apart from the issue of the customary line laid down in SCCO, references to the title of the Ordinance, "any goods destined for China", "Chinese Maritime Customs", etc. required adaptation. Given the obsolescence of the Ordinance repealing the Ordinance could be regarded as an appropriate way to deal with the necessary adaptation.

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16. The Chairman asked the Administration to consider introducing an amendment bill to give effect to the proposed repeal of SCCO if it was due to the obsolescence of the Ordinance. To facilitate members' further deliberations on the proposed repeal of SCCO at the next meeting, she requested the Administration to provide a comparison of the provisions in IEO and SCCO; to explain the legal implications of the enactment of IEO without repealing SCCO; and to set out the provisions in SCCO which did not conform with the status of Hong Kong as a SAR and required adaptation.

Foreign Jurisdiction (Expenses) Ordinance (Cap.223)

17. Assistant Director of Administration (2) (AD/A(2)) said that FJEO was enacted in 1889 to provide for expenses in relation to persons who had been convicted or acquitted on the ground of insanity before courts in any country or place out of "Her Majesty's dominions" under the UK Foreign Jurisdiction Acts. The expenses would be borne by and paid out of the Treasury. The Administration, however, could trace no record of any expenses incurred in relation to the Ordinance. Amendment was last introduced to the Ordinance in 1976 to reflect the change of the post title "Colonial Secretary" to "Chief Secretary".

18. AD/A(2) said that the Foreign Jurisdiction Acts was no longer applicable to Hong Kong since 1 July 1997. Since the scope of FJEO was restricted to those persons who had been convicted, or acquitted on the ground of insanity under the UK Foreign Jurisdiction Acts in places out of "Her Majesty's dominions", the Ordinance was obsolete and should be repealed.

19. Mr Howard YOUNG enquired whether consideration would be given to

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adopting similar localized legislation. AD/A(2) responded that the Administration could not trace the legislative intent of the Foreign Jurisdiction Acts having regard to the fact that the legislation was enacted a century ago. She reiterated that the Administration could trace no record of any expenses incurred in this regard, which suggested that the Ordinance had not been in active use. AD/A(2) pointed out that for cases where Hong Kong residents were convicted or acquitted before courts in other countries or places, the method of the settlement of related expenses should have been provided for in bilateral agreements or through consultation. Should there be mutual legal assistance or surrender of fugitive offenders agreements between Hong Kong and the countries or places concerned, provisions therein would have been spelt out clearly how related expenses would be borne by parties concerned. The Administration encountered no difficulties so far. In addition, the Foreign Jurisdiction Acts upon which the operation of FJEO depended had ceased to apply to Hong Kong after the reunification.

20. The Chairman said that FJEO was for the specific purpose of implementing the UK Foreign Jurisdiction Acts. Since those Acts had ceased to apply to Hong Kong after the reunification, she agreed that the proposed repeal of FJEO was within the scope of the adaptation of laws exercise.

21. Members raised no other questions on the proposed repeal of the Ordinance.

II. Date of next meeting

22. The next meeting was scheduled for 25 January 1999 at 2:30 pm.

23. The meeting ended at 3:35 pm.

Legislative Council Secretariat

21 January 1999